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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,143	02/24/2004	Glory Framary Alcantara	19279	8179

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/785,143	Applicant(s) ALCANTARA ET AL.	
	Examiner Jacqueline F. Stephens	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claims 21-37 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-24, 26, 27, 29, 30, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Suekane US Patent Application Publication 2002/0156445.

As to claim 21, Suekane shows in Figure 1 a personal care absorbent article having a longitudinal direction Ly, a lateral cross direction Lx, and an intermediate portion interposed between a pair of longitudinally opposed end portions (at Ly). The article comprises a backsheet 11, having laterally opposed side edges, shown in Figure 3, adjacent area 15a, 21; a liquid permeable topsheet 10, an absorbent body 12 sandwiched between the backsheet 11 and topsheet 10; and a separately provided singular wing panel member 15 joined to the intermediate portion of the article (Figure 2. Figures 7 and 8 show the wing panel members separately provided in the construction of the absorbent article. The wing panel members 15 are configured to wrap about an undergarment, see Figure 4. and paragraph 0038. Figure 2 shows a maximum longitudinal length of the wing panel member 15 is less than a maximum

longitudinal length of the backsheet. 15b is the contoured side edge of the wing panel member 15. Figure 3 shows the side edge 15b provides a continuous extension from a contoured side edge of the backsheet (adjacent 15a, 21).

The examiner interprets the limitation 'an entire cross-direction width of a corresponding region of said backsheet' to include any portion of the backsheet in the width direction. For instance, in Figure 4, the wing panel members 15 extends over a an entire cross-directional width of element 18, which includes a corresponding region of the backsheet. The wing panel member 15 extends laterally beyond the laterally-opposed terminal side edges of the backsheet, Figure 3. The article includes a composite transition section 1s,21 which includes a portion of the wing panel 15 along with a layered portion of the backsheet 11 (Figures 2 and 3, paragraph 0065). Figure 2 shows portion 1s is concave outward.

As to claim 22, see Figure 3.

As to claim 23, the limitations are directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claim 24, see Figure 3, composite transition section 1s,21.

As to claims 26 and 27, see Figure 3 where the wing 15 is joined to backsheet 11 and topsheet 10.

As to claims 29-30, Suekane discloses the wings 15 made from the claimed materials (paragraphs 0071- 0073).

As to claim 36, Suekane shows in Figure 1 a personal care absorbent article having a longitudinal direction, Ly a lateral cross direction Lx, and an intermediate portion interposed between a pair of longitudinally opposed end portions (at Ly). The article comprises a backsheet 11, having laterally opposed side edges, shown in Figure 3, adjacent area 15a, 21; a liquid permeable topsheet 10, an absorbent body 12 sandwiched between the backsheet 11 and topsheet 10; and at least one separately provided wing panel member 15 joined to the intermediate portion of the article (Figure 2. Figures 7 and 8 show the wing panel members separately provided in the construction of the absorbent article. The wing panel members 15 are configured to wrap about an undergarment, see Figure 4. and paragraph 0038. Figure 2 shows a maximum longitudinal length of the wing panel member 15 is less than a maximum longitudinal length of the backsheet. 15b is the contoured side edge of the wing panel member 15. Figure 3 shows the side edge 15b provides a continuous extension from a contoured side edge of the backsheet (adjacent 15a, 21). Figure 4 shows the wing panel members 15 extend over a major facing surface of the absorbent body. The

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article includes a composite transition section 1s,21 which includes a portion of the wing panel 15 along with a layered portion of the backsheet 11 (Figures 2 and 3, paragraph 0065). Figure 2 shows portion 1s is concave outward.

As to claim 37, see the rejection of claim 36, *supra*. Suekane further discloses a plurality of composite transition sections, one on each longitudinal side edge of the absorbent article.

DETAILED ACTION

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25, 28, 30, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suekane US 2002/0156445.

As to claims 25 and 28, Suekane discloses the claimed invention except for Suekane discloses the wing panel member joined to a body-side surface of the backsheet and a garment-side surface of the topsheet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the wing panel member joined to a garment-side surface of the backsheet and a body-side

surface of the topsheet, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to claim 30, Suekane discloses the present invention except, Suekane does not specifically disclose point-unbonded nonwoven for the wing panel members. It would have been an obvious matter of design choice to use the point-unbonded nonwoven for the wing panel members, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claims 32-35, Suekane discloses the present invention substantially as claimed except Suekane does not disclose the claimed percentages of length and the claimed distances. However, In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. Moreover discovering optimum values only involves routine skill in the art.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP


§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F. Stephens
Primary Examiner
Art Unit 3761

March 20, 2006